Proposal
to establish the
Nova Scotia Motor Vehicle Board

- a self-managed industry group -

A Consultation Paper

April 2002

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PART 1:
THE CASE FOR A NEW APPROACH TO REGULATION

INTRODUCTION

This consultation paper invites comments on a proposal to introduce an industry self-management approach to the licensing of automobile dealers in Nova Scotia. This means moving from a system entirely regulated by government to a system where responsibilities are shared between government and industry.

Why is the sale of automobiles regulated?

Nova Scotia, like all other provincial and state jurisdictions in North America, has a long history of regulating motor vehicle sales through the licensing of dealers. It has chosen to regulate in this field because new and used automobiles are, for most Nova Scotians, high value items—like insurance, securities, real estate, and funeral services-- and as such present significant opportunities and temptations for the unscrupulous to commit fraud. To be sure, the overwhelming majority of sales of motor vehicles by automobile dealers to consumers are a fair market place transaction. But the price paid by the unsuspecting consumer when fraud does occur is high, in both financial and emotional terms.

Consumers are increasingly vulnerable because of their lack of knowledge about automobiles, which have become very complex pieces of technology. An unsuspecting consumer would, for example, have no way of knowing, that it may be difficult or impossible to get clear title to a vehicle.

At the same time, legitimate automobile dealers are also being victimized. Take the situation of "curbsiders", for example. No one would suggest that an individual in Nova Scotia be denied the right to sell his or her automobile to a willing buyer. It happens all the time. However, motor vehicle dealers who have made significant financial investments in their businesses under stipulations of the Motor Vehicle Act now often find that they face competition from "curbsiders," who pose as private individuals conducting occasional sales but are in reality conducting an unlicensed business from their front yard, without meeting any of the commitments under the Act. Here, too, a more level playing field needs to be created for the health of this important industry sector.

What is the current situation in Nova Scotia?

The mainstay of the effort to protect consumers has been the Motor Vehicle Act which provides for the licensing of motor vehicle dealers, and establishing rules and regulations with respect to their operations. The vehicle dealer licensing provisions are currently administered and enforced by Service Nova Scotia and

Municipal Relations. There are currently some 1,500 dealer licenses issued in the province every year. Government inspectors visit the business occasionally and other government staff deal with complaints from the public about vehicle purchases. In addition to dealers, there are about 2,600 salespersons working at dealerships in the province. Salespersons currently do not need a licence to sell vehicles.

Three industry associations represent motor vehicle dealers. The Nova Scotia Automobile Dealers Association (NSADA) includes 130 new vehicle dealers, representing about 90% of this segment of the industry. The Licensed Vehicle Dealers' Association of Nova Scotia (LVDANS) represents about 60 used vehicle dealers. It is not known what percentage of the total used vehicle sales industry belong to LVDANS. A third association, the Recreational Vehicle Dealers' Association of Nova Scotia represents dealers of trailers, motorcycles, and other recreational vehicles.

The Government of Nova Scotia is determined to maintain consumer protection in the purchase of automobiles, no less than in other areas where the financial stakes are high. At the same time, it recognizes that it is difficult to improve program delivery at a time when its resources are expected to do more with less. Also, government does not have the expertise to ensure consumers appropriate protection against certain types of fraud, the kinds best recognized by other dealers. As a result, the government is increasingly open to reviewing the way it does business, to seek out and introduce new ways of doing things to improve service.

An opportunity to improve regulating the sale of automobiles in Nova Scotia in an affordable manner has presented itself. In September, 2001, Service Nova Scotia and Municipal Relations and the new and used car dealers associations in Nova Scotia agreed to jointly undertake a study to examine how this might be done. This study consisted of research and analysis to develop a potential mandate, structure, and the resourcing requirements for greater industry involvement in the licensing of automobile dealers.

A New Approach

The study found that many jurisdictions in Canada and the United States have applied industry self-management approaches for the licensing of automobile dealers, with proven success in terms of better consumer protection and a healthy industry. In Canada, both Ontario and Alberta have implemented industry self-management, and British Columbia is in the process of doing so. In the United States, Virginia and Texas are two examples of the many states which have identified a very clear public policy purpose in licensing automobile dealers, and have adopted self-management to that end. Here in Nova Scotia, industry self-management is already being used very effectively and efficiently for regulating the real estate industry.

In a typical Industry self-management situation government makes the laws and industry carries them out. For example, for trade in real estate in Nova Scotia, the government maintains the legislation and regulations, and makes changes based on needs that are determined by consumers and/or industry. The Nova Scotia Real Estate Commission makes by-laws based on what is allowed by the legislation. Then, the Commission makes sure that all individuals who sell real estate in the province meet the requirements and standards set by the legislation, regulation and by-laws

The study carried out jointly by government and industry in Nova Scotia concluded that industry self-management in the licensing of automobile dealers could improve consumer protection and provide a healthier industry. As stated earlier, government does not have the resources to focus the level of attention needed to improve the current situation; yet, industry has the desire to improve its standards. With industry self-management, the industry could take the time needed to enforce the regulations, set standards, educate dealers and introduce licensing and training for salespersons. This education/ training for dealers and salespersons would focus on protecting consumers and meeting codes of practice.

An industry board could dedicate staff to making sure that all of the dealers and salespersons meet the regulations and standards and play by the same rules. Government would focus time on monitoring the results of the Board and making sure that the right laws are in place to protect consumers and allow the Board the flexibility it needs to do its job.

Under industry self-management, the government would delegate the responsibility for the licensing of automobile dealers to a board of industry and consumer representatives, especially mandated and structured for this purpose, but still accountable to the government and the legislature. Typically, the responsibilities of such a board have included licensing, inspection, discipline, the creation and enforcement of quality standards, and the development of ethical guidelines.

Typically, too, the entire cost of the activities of the board have been borne by the industry being regulated, through the licensing fees. This would mean a significant increase in the licensing fees currently charged by government. This increase in fees would result directly in a stronger compliance effort and noticeably improved standards in the industry.

We Need to Hear from You

Three objectives have guided the development of this consultation paper. Ultimately, any new approach for regulating the sale of motor vehicles in Nova Scotia must:

- provide consumers with appropriate levels of protection against fraud in their purchase of an automobile

- create a level playing field for industry, so that they can have the confidence to invest in their businesses and create jobs for Nova Scotia

- achieve these goals of enhanced service delivery with the minimal possible impact on the taxpayers of Nova Scotia.

We welcome your views on the introduction of industry self-management for the licensing of automobile dealers and salespersons in Nova Scotia. The details of the proposed new approach are organized around four key themes: mandate, structure, accountability, and funding. To help you organize your thoughts, the paper contains questions after each of these key themes. The questions are also assembled in a questionnaire at the end of the paper.

We encourage both individuals and organizations to respond to these specific questions through the questionnaire, but please feel free to comment on any other issues that you think should be considered in the licensing of automobile dealers. The comments you provide will help determine the next steps in the development of a new approach to regulation in this sector.

To begin the consultation, we invite you to consider and respond to the following introductory, but fundamental, question.

What should we do?

1. Should the sale of motor vehicles in Nova Scotia continue to be regulated by licensing automobile dealers?

2. Do you think an industry self-management approach would be an improvement over the existing government administered system?

PART 2:
DETAILS OF THE PROPOSED NEW APPROACH

MANDATE OF THE NOVA SCOTIA MOTOR VEHICLE BOARD

If we proceed with industry self-management, government would carry out the policy work - make the laws and work with industry to shape regulations that protect consumers. Through the Nova Scotia Motor Vehicle Board, industry would administer and enforce the regulations, set standards and make sure they are met, and inform the public, dealers and salespersons about these standards.

In general terms, the Board would assume responsibility for (1) enhancing consumer protection in the purchase of automobiles, (2) creating a level playing field for dealers (3) enhancing industry professionalism

This core mandate can be expressed in terms of six (6) key activities or responsibilities: licensing, compliance, discipline & appeals, public complaint management, education, legislation and rule making. Following are proposals for each of these responsibilities.

Licensing

Under an industry self-management approach, the new Board would assume the responsibility currently resting with Service Nova Scotia and Municipal Relations for licensing all new and used automobile, trailer, motorcycle, and recreational vehicle dealers who conduct business in Nova Scotia. This Board would also have the ability to licence salespersons affiliated with these businesses, a practice that is not currently in place.

The work of the Board in licensing can be expected to improve the level of consumer protection and level the playing field for industry by ensuring greater business integrity among new entrants into the industry. The Board would dedicate staff to accomplish this, unlike the situation in government at this time where the staff involved have other responsibilities as well. There would be greater scrutiny in that all license applicants would be subjected to extensive background checks, focusing on verification of identity, the financial ability of the applicant to conduct business, and past conduct suggesting that the applicant will not carry on business in accordance with the law and appropriate standards of integrity and honesty. Moreover, all dealers would be required to pass a course certifying their understanding of such topics as disclosure of information to customers, dealer regulations, and service standards.

A process would be introduced to train and license salespersons. This is currently done in Ontario and Alberta because it is believed that salespersons can play a key role overall in improving consumer protection.

Some jurisdictions require all applicants for a dealer's license to post a bond. Alberta is currently considering this requirement, and then only until a compensation fund (discussed below under "public complaint management") is established. Saskatchewan, which licenses automobile dealers in the traditional way, does require a bond. Perhaps the most relevant experience is Virginia, where all applicants for a licence are required to obtain a bond in the amount of $25,000.00 for a period of 3 consecutive years.

A bond puts the onus on the surety company to cover any civil penalties incurred by a dealer, or to compensate consumers in the event of dealer bankruptcy. It could then try to recover its costs from the dealer. To reduce its risk, the bonding agent conducts its own background checks of applicants, covering such matters as personal references from reputable third parties, the time spent in the business, personal worth including registered savings plans, the inventory of automobiles, outstanding loans, and credit card balances. Costs vary, but a $20,000.00 bond, which is commensurate with maximum payout from a compensation fund in industry self-management situations, would cost an applicant approximately $300.00.

Bonding can protect consumers by ensuring that only applicants deemed fit to carry on business actually obtain an automobile dealer's license, and clearly puts the onus for redress on the individual dealer. There are a number of potential problems, however. The difficulty in obtaining a bond for even the most credible applicants could become a barrier to entry into business, and payouts would be solely at the discretion of the surety companies, who are likely to insist on a stringent definition of an offence, which could be problematic for ready redress for wronged consumers. Moreover, the fee for the bond would go to the surety company, rather than to the regulatory agent or the government.

Compliance

Compliance consists mainly of inspections to ensure that licensed dealers are abiding by the appropriate regulations in their business practices. Here, too, lack of resources has been a detriment to effective delivery by government. The dedicated personnel that an industry self-management approach could make possible would mean an increase in compliance through inspection, and thus contribute to greater consumer protection and a more level playing field for industry.

Ontario, for example, has seen a marked rise in consumer and dealer complaints, 2500 in 2000 up from 1100 in 1997, the start up year for its industry self-management board. The increase indicates that consumers have an

increased awareness of their rights and confidence that their issues with be resolved. Ontario also had an increase in investigations and convictions.

To ensure best use of scarce resources, and to help reduce 'red tape,' a targeted approach to enforcement is suggested for Nova Scotia. Thus, the Board would emphasize inspections based on risk profiles and consumer and industry identification of potential violations of the act. The results of the inspection and follow-ups could lead to disciplinary procedures.

Discipline & Appeals

The ability to apply sanctions such as fines, or discipline such as licence suspension, to dealers or salespersons whose sales practices are found to be in violations of the statutes or regulations is critical to both consumer protection and a healthy industry. The list of possible infractions is long, but can run from simple violations of dealer premises requirements and the failure to keep records, to unlicensed sales, tampering with odometers, misrepresentation, undisclosed salvage vehicle sales, and serious fraudulent sales practices. At the same time, it is essential that application of disciplinary actions proceed in a fair and transparent manner, with full opportunity for appeal by those affected. Industry self-management would enable the Board to oversee an internal process in both these areas. For an example of how the disciplinary process might work, see Appendix "A".

Public Complaint Management

As can be seen, complaints play a major role in triggering the processes of the Board with respect to its disciplinary function in licensing automobile dealers and salespersons. The Board will have to manage complaints and/or inquiries from both consumers and industry members. It is important that stakeholders understand that the Board exists to provide consumer protection and encourage a healthy industry. This can best be accomplished if the Board is proactive in informing consumers and businesses about the process for discipline and appeals, and encouraging them to use it. The process can be furthered if the Board also provides advice to dealers about how to handle customer complaints.

Some jurisdictions have also established funds to compensate consumers who had lost money unfairly in the purchase of an automobile, in the event that the dealer cannot or will not take responsibility. The compensation fund can be seen as industry's collective guarantee to consumers that they will be reimbursed for transactions with a licensed dealer that involved proven fraud, theft, or false pretenses under circumstances specified in the legislation.

Compensation funds are, in fact, quite common where industry self-management approaches are used. In Canada, Ontario and British Columbia have established such funds, and Alberta is in process of doing so. In the United States, Virginia has such a fund. Maximum payouts from these funds are typically $15,000-20,000 per case.

The experience in Ontario provides a good example of how a compensation fund can work. A Motor Vehicle Compensation Fund was established in that province in 1986, before industry self-management was instituted. The fund compensates consumers who lost money in specific types of transactions with dealers registered under the Act. Consumers may make a claim based on a sale/trade in a motor vehicle for a variety of situations including, but not limited to, when (1) a court judgement remains unpaid for 90 days, (2) a deposit is paid and the vehicle is not delivered, (3) bankruptcy is claimed and proven. The fund, which is seen as a "last resort", limits payouts to $15,000. In 1998, there were 83 claims on the fund, of which 43 were approved at a cost of $220,000, while in 1999, there were 58 claims of which 47 were approved at a cost again of $220,000.

With industry self-management, the revenue for this fund comes from automobile dealers. The current payment structures vary. British Columbia requires a $300.00 payment per location; Ontario levies $345 with an initial license (more if the overall fund drops below $1.5 million), while Virginia requires a $250.00 payment for each of the first three years in which a license, and $100.00 per year thereafter. In addition, it requires a payment of $10.00 from salespersons.

A compensation fund represents perhaps the most significant commitment to consumer protection that the industry can make as an industry, but it obviously takes time to build. It is proposed that a compensation fund will eventually be established as part of co-regulation in the licensing of automobile dealers and salespersons in Nova Scotia.

Education

Increasingly, Boards such as that proposed here take responsibility for educating industry with respect to its responsibilities, and consumers with respect to their rights, in the purchase of an automobile. It is proposed that the Board in Nova Scotia would engage in a proactive information campaign to educate industry as to its responsibilities and consumers with respects to their rights, using an up-to-date website, educational publications, and presentations to industry and consumer bodies.

In Texas, for example, the Motor Vehicle Board produces pamphlets for industry called "Know the Law" covering three widely violated rules, as well as a brochure on the rights of respondents appearing before the Board. Similarly, it produces a brochure for consumers with tips on buying cars. In addition, Board personnel appear as speakers at industry and stakeholder meetings, and provide training seminars with respect to odometer fraud and dealer law. The same is true in Ontario. As part of an awareness initiative, the Board maintains a website, accepts public speaking engagements, and targets articles for publication in the consumer oriented media and industry trade journals.

Legislation and Rule-Making

A fast changing marketplace always raises significant challenges in terms of consumer protection, and certainly so in the area of automobile purchases. On the one hand, strong legislation is a plus for consumers and industry; on the other, making amendments to legislation can be time consuming, leaving regulatory agencies behind the curve, as it were. In both Canada and the United States, giving the enforcing authority power under statute to make rules with the force of legislation has been seen as a way around this dilemma. In the United States, this power is typically vested in the Motor Vehicle Boards; in Canada, Ontario has proposed to vest this power in the Minister.

A self-managed board in Nova Scotia would have a significant role to play in ensuring that provisions for consumer protection and a healthy industry are continuously effective. While policy responsibility would remain with the Minister and staff of Service Nova Scotia and Municipal Relations, the Board's operational expertise and market savvy would enable it to make recommendations to the Minister for any necessary rule changes. The Minister would, of course, remain free to accept or reject such recommendations, and to seek input from other stakeholders, such as consumer groups or advocates, at his or her discretion. This approach is similar to what currently happens in Nova Scotia with the Real Estate Commission. Government maintains the legislation and regulations, the Commission has input to both, and the Commission has discretion over their by-laws which guide the day-to-day business of the Commission.

This proposal for industry self-management in the licensing of automobile dealers and salespersons in Nova Scotia raises a number of questions.

What should we do?

3. Should all applicants for an automobile dealers license in Nova Scotia be subject to rigorous background checks? If so, are the listed checks sufficient?
4. Do salespersons need to be licensed, or should the dealer they work for be responsible for their knowledge and customer service standards?
5. Should there be a requirement that dealers and/or salespeople be bonded?
6. Should a compensation fund be introduced as an alternative to bonding?
7. Should any other functions other than those listed above be included in the mandate of the new Motor Vehicle Board in Nova Scotia? Should any of the listed functions be excluded?

STRUCTURE OF THE NOVA SCOTIA MOTOR VEHICLE BOARD

The new authority, the Nova Scotia Motor Vehicle Board, would actually consist of three parts: 1. the Board itself, consisting of eight (8) individuals, 2. the staff hired by the Board, and 3. various volunteer committees.

Finding the right structure for the Board is critical to the success of any industry self-management regulatory initiative. For the licensing of automobile dealers, the potential models are very diverse. In Texas, for example, there is a 6 person board, no members of whom are allowed to have any involvement with the automobile industry, while in Louisiana, there is a 15 member board, all members of which must have at least five years experience as an automobile dealer!

The Canadian practice is to have a more representative board, bringing together the concerns and expertise of a variety of stakeholders, including government, industry at large, industry associations, and consumers. In Ontario, for example, there is a 12 member board, comprised of nine motor vehicle industry organization representatives, and three consumer/government representatives.

The key point is that any structure should promote effectiveness, efficiency, and fairness in carrying out the regulatory mandate.

The Nova Scotia Motor Vehicle Board

The proposed Nova Scotia Motor Vehicle Board would be composed of 8 individuals, as follows:

- 2 Directors appointed by the Nova Scotia Automobile Dealers' Association.
- 1 Director appointed by the Licensed Vehicle Dealers' Association of Nova Scotia.
- 1 Director appointed by the Recreational Vehicle Dealers' Association of Nova Scotia.
- 2 Directors appointed by the Minister of Service Nova Scotia Municipal Relations to represent public/consumer interests.
- 1 salesperson nominated by industry stakeholders and appointed by the other Directors.
- 1 additional Director, who is not a member of the above associations, nominated by industry stakeholders and appointed by the other Directors (e.g. independent dealers, auctions).

It is proposed that the Chair of the Board be elected by Board members.

A number of points should be noted about this proposed structure. First, it tries to ensure that the Board is *representative* of stakeholders. The background of directors recognizes the relative contribution of various segments of the industry to the economy, and the need for a strong consumer voice. The consumer presence on the Nova Scotia Board would be among the strongest of any board

for the licensing of motor vehicle dealers in North America. The proposed Board would also be the first in North America to give a seat at the table to salespersons. Second, the proposal aims to create an *efficient* board. Only the Texas board would be smaller in size than that proposed for Nova Scotia. Third, to ensure *effectiveness*, Board members would have to meet strict pre-set criteria, including proof of good character, a background check, the ability to attend at least 75 per cent of scheduled Board meetings and to participate actively in committees. In addition, all Board members would have to sign agreements with respect to confidentiality, conflict of interest, and conduct.

To ensure a seamless transition from the current setup in which government licenses automobile dealers, a government member would act as an ex officio advisor to the Board for a period of 12-18 months.

Staffing and Skills

To carry out the day-to-day functions, the Board would have a small staff. The team would be headed by an Executive Director who would effectively assume many of the duties currently carried out by the government person responsible for the licensing program. The Executive Director position would require experience in business and government relations.

Based on past experience in Nova Scotia, and current experience in industry self-management elsewhere in the licensing of automobile dealers, the Board would require the support of between four and six full-time staff members and investigators, providing expertise in compliance, complaints management, and licensing as well as office support. Typically, these staff would be full Board employees; however, for sake of efficiency, and consistent with the emphasis on targeted, risk based inspection, it is proposed that the investigators be contracted on an as-needed basis. The compliance position would require extensive experience and knowledge of the automobile industry and investigation techniques.

Advisory Committees

One of the challenges facing the Board will be keeping abreast of industry and consumer needs in what is a very dynamic marketplace. To that end, it is proposed that the Board appoint advisory committees, comprised in each case of a combination of industry, consumer and government stakeholders, and led by a director of the Board, to assist in its work. An analysis of the Nova Scotia situation and experience elsewhere suggest that the following committees would be required to ensure that the Board meets its mandate with respect to consumer protection and a healthy industry. The Board would, of course, be free to establish any other committees that it deemed necessary to carry out its mandate.

Education

This committee would have a mandate to:

- Design and develop educational publications directed at industry and consumer audiences
- Oversee dealer and salesperson educational and certification programs/seminars
- Ensure ongoing training of Board members
- Provide an on-going assessment of necessary and preferable skill sets for Board members and staff

Ethics

This committee would have a mandate to :

- Establish and maintain an industry *Code of Ethics* and *Standards of Business Practice*. The latter would provide automobile dealers and salespersons with an understanding of expectations regarding, among other things, integrity, disclosure of information, accountability, compliance, confidentiality, and professionalism

Compliance

This committee would have a mandate to:

- Identify dealer and salesperson practice issues.

Complaints Review Committee

This committee would have a mandate to:

- Review a decision by the Executive Director that a formal Complaint should be forwarded to the Discipline Hearing Panel. The committee would have the power to decide that (1) no further action be taken, (2) that an minor administrative sanction be applied, or (3) a formal disciplinary hearing was warranted.

Discipline

- This committee would serve as the Discipline Hearing Panel identified earlier in the discussion of the discipline and appeals aspect of the Board mandate. Thus, it would hear any consumer or dealer complaints that were not resolved at an earlier stage of the internal discipline process.

ROLE OF EXISTING AGENCIES AND ASSOCIATIONS

The introduction of an industry self-management approach means that an administrative body assumes responsibility for the administration of regulations that were previously within the purview of government alone. This raises the question of what role, if any, is to be played by the government agency which previously had these responsibilities.

It is important to understand that the Government of Nova Scotia does not relinquish any of its governance responsibilities or powers in moving to an industry self-management approach in the licensing of automobile dealers; rather, it is utilizing private sector expertise and resources, both financial and human, to achieve a public policy end, in this case, protection for consumers and a level playing field for dealers. Specifically, this would mean that the Minister of Service Nova Scotia and Municipal Relations would continue to be responsible for any changes to the legislation governing the licensing of automobile dealers, and the issuing of dealer plates. Moreover, the Minister would continue to be responsible for ensuring that the Board achieves acceptable levels of performance in terms of public policy objectives.

Industry self-management could mean a change for industry associations. Aside from having directors on the Board, the associations could become involved in organizing and possibly administering the certification requirements such as training.

This statement of the proposed structure of the Nova Scotia Motor Vehicle Board also raises a number of questions upon which we invite comment.

What should we do?

8. Is the proposed structure of the Board appropriate in terms of size and representation of stakeholders?

9. Is the list of committees adequate, or should any be added to deleted?

10. What other roles, if any, should existing agencies and industry associations play?

ACCOUNTABILITY IN THE LICENSING OF AUTOMOBILE DEALERS

The issue of accountability deserves consideration in the use of alternative delivery mechanisms such as industry self-management. Currently, the Minister of Service Nova Scotia and Municipal Relations is responsible for the administration of the Motor Vehicle Act as it pertains to the licensing of automobile dealers. Department staff carry out this responsibility on a day-to-day basis, reporting directly to the Minister through senior management, and the Minister is accountable to the House of Assembly.

Accountability for Government

In an industry self-management approach, accountability for government could be met by the following. First, the Government of Nova Scotia through the Minister for Service Nova Scotia and Municipal Relations would continue to have responsibility for policy and the legislation governing the licensing of automobile dealers, and all changes to that legislation will still require approval by the House of Assembly. Second, any Board proposals for changes in its mandate or regulations would still require approval by the Minister. Third, the Minister would appoint 2 of the 8 members of the Board to represent consumer interests and to ensure that the Board's decisions reflect the public interest.

Accountability for the Board

Generally, the requirement for transparency and fairness in the licensing, disciplinary, and appeals processes provides for an obvious measure of accountability. Then, a number of specific activities would directly support accountability. First, the Board would be required to produce an annual report which would be submitted to the House through the Minister. Second, the Board would be required to develop and disseminate publicly a strategic plan and annual business plan. Third, a third party audit would ensure that the Board meets acceptable standards in the conduct of its financial affairs. Finally, performance indicators could be established to provide visible evidence of the Board's progress in meeting public policy objectives.

What should we do?

11. Does the Minister's control over legislative and regulatory changes provide sufficient accountability on the part of the proposed Nova Scotia Motor Vehicle Board?

12. Do the corporate requirements for annual reports, strategic and business plans, and third-party audits provide an adequate measure of additional accountability for the proposed Nova Scotia Motor Vehicle Board?

FUNDING THE NOVA SCOTIA MOTOR VEHICLE BOARD

A final and critical factor to consider in moving to an industry self-management approach to the licensing of automobile dealers in Nova Scotia is cost. As indicated at the outset, one of the principles underlying moves by government to develop partnerships with the private sector is that it will result in equal or better quality of service delivery with reduced costs. In essence, this means that a board charged with responsibility for licensing automobile dealers in Nova Scotia should fund its full cost of operations, from a combination of licensing and administrative fees, charges for service, and potentially revenues collected from fines or penalties.

The experience among Canadian provinces historically has been that the level of fees governments have charged for an automobile dealers license has borne little if any relationship to the cost of delivering the services. The move to co-regulation in the licensing of automobile dealers with full cost recovery, has meant a significant increase in fees. It should be noted, however, that these increased costs have purchased an enhanced level of consumer protection and a more level playing field for industry.

The current fee structure in Ontario is $300.00 annually for a dealer license (plus the $345.00 payment to the Motor Vehicle Compensation Fund as discussed above). In addition, every individual that will be involved in the operations of a dealership and buying or selling automobiles on behalf of the dealership is assessed a $175.00 fee. In Alberta, the annual fee is $175.00 for a single dealer's license, and $300.00 for a multiple business license. The annual fee for a salesperson's license is $75.00. In Virginia, fees are currently $550.00 annually for dealers, and $30.00 for salespersons. In Louisiana, the fees for 2001 were a maximum of $300.00 for dealers, and $30.00 salespersons. Texas has a graduated scheme based on units sold, beginning at $175.00 and rising to $750.00.

As in other Canadian provinces, the move to co-regulation will require an increase in the fees for a dealer's license in Nova Scotia. An analysis of the probable costs of the Board suggests the following fee structure:

License Type	Current Fee	Proposed Fee
Initial	**$150**	**$550**
Renewal	**$100**	**$500**
Initial Supplemental	**$25**	**$100**
Renewal Supplemental	**$25**	**$75**
Salesperson	**no licence**	**$100**

The increase in operational funds will allow the Board to carry the level of compliance and other measures that are needed to make a significant difference in the standards maintained by motor vehicle dealers in Nova Scotia.

What should we do?

13. Is the level of fees proposed for an automobile dealers licence in Nova Scotia appropriate, given the benefits that will be achieved in terms of consumer protection and a more level playing field for industry?

CONCLUSION

This Consultation Paper lays out a proposal for how government could share the responsibility for regulating motor vehicle dealers with industry in the province. This approach is not new in Canada, as both Ontario and Alberta use this approach. Nor is it new in Nova Scotia because this is how the real estate industry is regulated. These particular models work well. They are successful because they were planned carefully and the right steps were put into place to transition the change with support from the government bodies that previously regulated them. Any changes to the licensing of motor vehicle dealers in Nova Scotia would follow the same approach to implementation.

Are we ready to move in this direction in Nova Scotia?

Please consider this proposal carefully and let us know what you think.

The attached questionnaire can be filled out and mailed in or you can give us your comments on the internet at: www.gov.ns.ca/snsmr

APPENDIX "A"

The disciplinary process in an industry self-management approach to licensing motor vehicle dealers might work like this:

1. A consumer or dealer would file a complaint with the Board regarding the sales practices of a dealer.

2. Board staff would record the complaint, and suggest that the complainant first speak directly to the dealer involved, and try to resolve the difficulty in an informal way.

3. Should this not resolve the issue, Board staff would obtain formal statements from both the complainant and the dealer, and attempt informal mediation.

4. Should this mediation effort not resolve the issue, the Board would order an official investigation, carried out by investigators with a law enforcement background. A report would be filed with the Executive Director of the Board.

5. After reviewing the investigation report, the Executive Director could (1) direct that no further action be taken, (2) negotiate a settlement agreement (in which the industry member would acknowledge the facts and agree to the charge(s) and to a penalty), or (3) refer the matter as a Complaint to a formal discipline hearing. It is important to note that a Complaint in this context is a legal instrument which states the violation that the dealer has allegedly committed, and asks for a administrative penalty(fine) or action against the licensee.

6. A dealer formally notified of a Complaint by the Executive Director could appeal immediately to a Complaint Review Committee. This committee would conduct a preliminary hearing to determine whether (1) no further action should be taken, (2) a relatively minor disciplinary sanction (e.g. a formal caution, or a recommendation that a dealer take an appropriate course) should be imposed, or (3) a formal disciplinary was appropriate.

7. Formal disciplinary hearings would be held by a Discipline Hearing Panel, comprised of three members approved by the Board of Directors. The Panel could retain independent counsel to advise it on legal and process issues; the subject of the disciplinary hearing could also be represented by outside counsel. The Disciplinary Panel would have the right to revoke, fail to renew, or impose terms or conditions on a license, to impose an administrative monetary penalty of up to $10,000, and to award costs.

8. A decision made by the Disciplinary Hearing Panel could be appealed to an Appeals Panel, made up of members of the Board of Directors. As with other appeals from decisions of quasi-judicial tribunals, appeals would be limited to questions of law or fact, and limited to the record of the disciplinary hearing.

9. A decision made by the Appeals Panel could be appealed to the courts.

QUESTIONNAIRE

Responses: Please provide your feedback in the space below. If you need more space, or prefer to write comments rather than follow the questions, include this on separate paper.

Deadline: Send in your comments by June 15, 2002.

Mail to: Motor Vehicle Dealer Licensing Review
Service Nova Scotia and Municipal Relations
PO Box 1003
Halifax, Nova Scotia B3J 2X1

Information: 424-5200 (toll free outside of Halifax, 1-800-670-4357)

The consultation paper may be viewed and responded to on the Internet at:
http://www.gov.ns.ca/SNSMR/

1. Should the sale of automobiles in Nova Scotia continue to be regulated by licensing automobile dealers?

2. Do you think an industry self-management approach would be an improvement over the existing government administered system?

3. Should all applicants for an automobile dealers license in Nova Scotia be subject to rigorous background checks? If so, are the listed checks sufficient?

4. Do salespersons need to be licensed, or should the dealer they work for be responsible for their knowledge and customer service standards?

5. Should there be a requirement that dealers and/or salespeople be bonded?

6. Should a compensation fund be introduced as an alternative to bonding?

7. Should any other functions other than those listed above be included in the mandate of the new Motor Vehicle Board in Nova Scotia? Should any of the listed functions be excluded?

8. Is the proposed structure of the Board appropriate in terms of size and representation of stakeholders?

9. Is the list of committees to advise the Board adequate, or should any be added to deleted?

10. What other roles, if any, should existing agencies and industry associations play?

11. Does the Minister's control over legislative and regulatory changes provide sufficient accountability on the part of the proposed Nova Scotia Motor Vehicle Board?

12. Do the corporate requirements for annual reports, strategic and business plans, and third-party audits provide an adequate measure of additional accountability for the proposed Nova Scotia Motor Vehicle Board?

13. Is the level of fees proposed for an automobile dealers licence in Nova Scotia appropriate, given the benefits that will be achieved in terms of consumer protection and a more level playing field for industry?